

CLERK OF THE  
DISTRICT COURT  
CONNIE MATTFIELD

2016 AUG 15 PM 3:16

FILED

BY Connie Mattfield  
DE (Clerk)

1 Glenn W. Mattar #13228  
2 Denenberg Tuffley, PLLC  
28411 Northwestern Hwy.  
Suite 600  
3 Southfield, MI 48034  
Phone: (248) 549-3900  
4 Fax: (248) 593-5808  
E-mail: gmattar@dt-law.com  
5  
6 And  
7  
8 Jack Slavik #5962  
9 Cozen O'Connor  
999 Third Avenue, Suite 1900  
10 Seattle, WA 89104  
Phone: (206) 373-7238  
11 Fax: (866) 229-5685  
Email: jslavik@cozen.com  
12  
13 *Attorneys for Plaintiff*

14  
15  
16 MONTANA FOURTEENTH JUDICIAL DISTRICT COURT  
17 MUSSELSHELL COUNTY

18 SIGNAL PEAK ENERGY, LLC

19 Cause No. DV-16-43  
20 Judge Randal I. Spaulding

21 Plaintiff,

22 vs.

23  
24 COMPLAINT AND  
DEMAND FOR TRIAL BY JURY

25 GENERON IGS, INC.; SULLAIR, LLC; POWER  
26 SERVICE, INC. and JOHN DOES 1-10.

27 Defendants.

28 COMES NOW Plaintiff, Signal Peak Energy, LLC by and through its undersigned  
29 counsel, and for its Complaint and Demand for Trial by Jury states and alleges as follows:

30  
31 PARTIES AND JURISDICTION

32 1. Plaintiff Signal Peak Energy, LLC ("Signal Peak") is a Delaware corporation with  
33 its principal place of business in Columbus, Ohio.

34 2. Upon information and belief, Defendant Generon IGS, Inc. ("Generon") is a

1 | Delaware corporation with its principal place of business in Houston, Texas.

2       3.     Upon information and belief, Defendant Sullair, LLC ("Sullair") is an Indiana  
3 limited liability company with its principal place of business in Michigan City, Indiana.

4       4. Upon information and belief, Defendant Power Service, Inc. ("Power Service") is  
5 a Wyoming Corporation with its principal place of business in Casper, Wyoming.

6       5. Upon information and belief, John Does 1-10 are individuals and/or companies,  
7 including subcontractors and manufacturers, who participated in and/or provided products used  
8 in the construction, manufacture, installation, maintenance, service, commissioning, and/or  
9 inspection of the nitrogen generating plant, including but not limited to the subject compressor  
10 unit.

11 6. The amount in controversy exceeds the jurisdictional minimum of this Court.

12 7. Venue is proper in this Court as the events giving rise to Plaintiff's claims  
13 occurred in the Town of Roundup, County of Musselshell, State of Montana.

## **FACTS**

15 8. At all times relevant herein, Signal Peak owned a coal mine located at 100 Portal  
16 Drive in Roundup, Montana (the "Mine").

17 9. The Mine has a containerized nitrogen generating plant that was supplied by  
18 Defendant Generon and installed/commissioned in various stages from August, 2012 through  
19 April 2013 (the "Plant").

20 10. Generon installed and commissioned the various components of the Plant, which  
21 included nitrogen generating and compressor units (among other components).

22 11. On November 24, 2014, at approximately 9:30 A.M., a Signal Peak employee  
23 turned on the Plant (it has previously been idle for three weeks).

1       12. At approximately 11:25 A.M., smoke was discovered escaping from one of the  
2 plant's compressor units (C9) (the "Compressor Unit").

3       13. Upon further inspection a fire was discovered within the Compressor Unit and the  
4 fire had spread to a nitrogen production unit (NPU2) and the motor control center (the "Fire").

5       14. The Fire was extinguished shortly after its discovery.

6       15. However, Fire caused extensive damage to the Compressor Unit, the nitrogen  
7 production unit, and the motor control center.

8       16. The Fire also caused Signal Peak significant extra expenses in renting a temporary  
9 nitrogen generator when repairs to the plant were ongoing.

10      17. Damages from the Fire totaled \$2,355,271.00.

11      18. Subsequent expert investigations revealed the Fire originated in the oil/air  
12 separator in the Compressor Unit.

13      19. The oil/air separator was manufactured by Defendant Sullair.

14      20. The Plant was maintained and serviced by Defendant Power Service.

15      21. Expert investigations also revealed that Generon improperly installed the  
16 Compressor Unit.

17      22. Specifically, Generon installed the Compressor Unit's oil pressure switch and  
18 temperature switch (safety devices) with the incorrect setting.

19      23. The incorrect setting caused the Compressor Unit to shut down shortly after start-  
20 up during Generon's commissioning process.

21      24. Instead of setting the switches to the correct setting, Generon employees simply  
22 wired ("jumped") around them, thereby rendering them totally ineffective.

23      25. The failure of these switches to be installed correctly caused and/or contributed to

1 the aforementioned damage.

2 **COUNT I – NEGLIGENCE/GROSS NEGLIGENCE (GENERON)**

3 26. Plaintiff restates and re-alleges all paragraphs above.

4 27. At all times relevant herein Generon had a duty to exercise reasonable care when  
5 designing, manufacturing, installing, commissioning, inspecting, and or servicing the Plant,  
6 including the Compressor Unit, so as to avoid damage to Signal Peak's property.

7 28. Generon breached its duty through the following acts and/or omissions  
8 constituting negligence and/or gross negligence, including but not limited to:

- 9 a. Failing to install the Compressor Unit with the oil pressure and  
10 temperature safety switches on the correct setting;
- 11 b. Wiring around the safety switches and rendering them ineffective;
- 12 c. Failing to include additional safety switches or monitoring devices in the  
13 Compressor Unit that could have prevented the Fire;
- 14 d. Failing to properly design and install the Compressor Unit so a fire would  
15 not occur;
- 16 e. Failing to use reasonable care when designing, manufacturing, installing,  
17 commissioning, and or servicing the Plant, including but not limited to the  
18 Compressor Unit;
- 19 f. Failing to provide adequate warnings/instructions as to the use,  
20 maintenance, operation, and service of the Plant, including but not limited  
21 to the Compressor Unit;
- 22 g. Improperly delegating, hiring, and/or supervising the workmanship and  
23 safety of the services delegated and/or subcontracted to another entity; and
- 24 h. Any other acts or omissions that may become known during the course of  
litigation.

25 29. As a direct and proximate result of Generon's negligence and/or gross negligence,  
26 the Fire occurred and caused extensive damage to Signal Peak's property and resulted in  
27 significant extra expense.

1       30. Damages from the Fire totaled \$2,355,271.00.

2       WHEREFORE, Plaintiff respectfully request this Court award it a judgment against  
3 Generon in an amount to be proven at trial, together with costs, attorney's fees, expenses, pre-  
4 and post-judgment interest and any other relief this Court deems just and proper.

5       **COUNT II – BREACH OF EXPRESS AND/OR**  
6       **IMPLIED WARRANTIES (GENERON)**

7       31. Plaintiff restates and re-alleges all paragraphs above.

8       32. Generon designed, manufactured, sold, installed, commissioned and/or serviced  
9       inspected the Plant, including but not limited to the Compressor Unit.

10       33. Generon impliedly and/or expressly warranted that the Plant, including but not  
11       limited to the Compressor Unit, would be fit for the ordinary purpose the Plant was to be used,  
12       that the Plant would be fit for Signal Peak's particular purposes, that the Plant would be of fair  
13       average quality, that the Plant would be free from defects, and that it would design, manufacture  
14       and install the Plant with reasonable care.

15       34. Generon breached its express and/or implied warranties through the following  
16       acts and/or omissions:

- 17       a. Failing to install the Compressor Unit with the oil pressure and  
18       temperature safety switches on the correct setting;
- 19       b. Wiring around the safety switches and rendering them ineffective;
- 20       c. Failing to include additional safety switches or monitoring devices in the  
21       Compressor Unit that could have prevented the Fire;
- 22       d. Failing to properly design and install the Compressor Unit so a fire would  
23       not occur;
- 24       e. Failing to use reasonable care when designing, manufacturing, installing,  
25       commissioning, and or servicing the Plant, including but not limited to the  
26       Compressor Unit;

- f. Failing to provide adequate warnings/instructions as to the use, maintenance, operation, and service of the Plant, including but not limited to the Compressor Unit;
- g. Improperly delegating, hiring, and/or supervising the workmanship and safety of the services delegated and/or subcontracted to another entity; and
- h. Any other acts or omissions that may become known during the course of litigation.

6 35. As a direct and proximate result of Generon's breach of its express and/or implied  
7 warranties, the Fire occurred and caused extensive damage to Signal Peak's property and  
8 resulted in significant extra expense.

36. Damages from the Fire totaled \$2,355,271.00.

10 WHEREFORE, Plaintiff respectfully request this Court award it a judgment against  
11 Generon in an amount to be proven at trial, together with costs, attorney's fees, expenses, pre-  
12 and post-judgment interest and any other relief this Court deems just and proper.

**COUNT III – BREACH OF CONTRACT (GENERON)**

14 37. Plaintiff restates and re-alleges all paragraphs above.

15 38. Signal Peak contracted with Generon whereby Generon agreed to design,  
16 manufacture, sell, supply, install, and commission the Plant, including but not limited to the  
17 Compressor Unit.

18 39. Generon breached its contractual obligations through the following actions and/or  
19 omissions, including but not limited to:

- a. Failing to install the Compressor Unit with the oil pressure and temperature safety switches on the correct setting;
- b. Wiring around the safety switches and rendering them ineffective;
- c. Failing to include additional safety switches or monitoring devices in the Compressor Unit that could have prevented the Fire;

- d. Failing to properly design and install the Compressor Unit so a fire would not occur;
- e. Failing to use reasonable care when designing, manufacturing, installing, commissioning, and or servicing the Plant, including but not limited to the Compressor Unit;
- f. Failing to provide adequate warnings/instructions as to the use, maintenance, operation, and service of the Plant, including but not limited to the Compressor Unit;
- g. Improperly delegating, hiring, and/or supervising the workmanship and safety of the services delegated and/or subcontracted to another entity; and
- h. Any other acts or omissions that may become known during the course of litigation.

40. As a direct and proximate result of Generon's breach of contract, the Fire occurred and caused extensive damage to Signal Peak property and resulted in significant extra expense.

41. Damages from the Fire totalcd \$2,355,271.00.

WHEREFORE, Plaintiff respectfully request this Court award it a judgment against Generon in an amount to be proven at trial, together with costs, attorney's fees, expenses, pre- and post-judgment interest and any other relief this Court deems just and proper.

**COUNT IV – STRICT PRODUCTS LIABILITY (GENERON)**

42. Plaintiff restates and re-alleges all paragraphs above.

43. At all pertinent times herein, Generon was in the business of manufacturing, assembling, designing, producing, inspecting, selling, and/or otherwise placing into the stream of containerized nitrogen generating plants, including compressor units.

44. Generon, in whole or in part, manufactured, assembled, designed, produced, inspected, and/or sold the Plant, including but not limited to the Compressor Unit.

1       45. At the time the Plant, including but not limited to the Compressor Unit, left the  
2 control of Generon, a defect existed that rendered the Plant defective in that it was dangerous to  
3 an extent beyond that anticipated by the ordinary user.

4       46. The Plant, including but not limited to the Compressor Unit, was defective in  
5 manufacture, design and/or warning/instruction as:

- 6       a. Generon failed to install/manufacture the Compressor Unit with the oil  
7 pressure and temperature safety switches on the correct setting;
- 8       b. Generon wired around the safety switches and rendering them ineffective;
- 9       c. Generon failed to include additional safety switches or monitoring devices  
10 in the Compressor Unit that could have prevented the Fire;
- 11       d. Generon failed to properly design and install/manufacture the Compressor  
12 Unit so a fire would not occur;
- 13       e. Generon failed to provide adequate warnings/instructions as to the use,  
14 maintenance, operation, and service of the Plant, including but not limited  
15 to the Compressor Unit;
- 16       f. Generon failed to use reasonable care when designing, manufacturing,  
17 installing, commissioning, and or servicing the Plant, including the  
18 Compressor Unit;
- 19       g. Any other evidence of manufacturing, design and/or warning/instruction  
20 defects that may become known during the course of litigation.

21       47. As a direct and proximate result of the defective condition of the Plant, including  
22 but not limited to the Compressor Unit, the Fire occurred and caused extensive damage to Signal  
23 Peak property and resulted in significant extra expense.

24       48. Damages from the Fire totaled \$2,355,271.00.

25       **WHEREFORE**, Plaintiff respectfully request this Court award it a judgment against  
26 Generon in an amount to be proven at trial, together with costs, attorney's fees, expenses, pre-  
27 and post- judgment interest and any other relief this Court deems just and proper.

**COUNT V – NEGLIGENCE (SULLAIR)**

49. Plaintiff restates and re-alleges all paragraphs above.

3 50. At all times relevant herein Sullair had a duty to exercise reasonable care when  
4 designing, manufacturing, installing, and/or commissioning the Sullair components in the  
5 Compressor Unit, including but not limited to the oil/air separator, so as to avoid damage to  
6 Signal Peak's property.

7 51. Sullair breached its duty through the following acts and/or omissions constituting  
8 negligence and/or gross negligence, including but not limited to:

- a. Failing to design and manufacture the subject oil/air separator to allow for adequate grounding to prevent sparking or ignition;
- b. Failing to provide adequate warnings and instructions as to the use, maintenance, and service of the subject oil/air separator;
- d. Failing to properly design and manufacture the subject oil/air separator so a fire would not occur;
- e. Failing to use reasonable care when designing, manufacturing, providing warnings/instructions and/or installing the subject oil/air separator and other components in the Compressor Unit;
- f. Improperly delegating, hiring, and/or supervising the workmanship and safety of the services delegated and/or subcontracted to another entity; and
- g. Any other acts or omissions that may become known during the course of litigation.

52. As a direct and proximate result of Sullair's negligence, the Fire occurred and caused extensive damage to Signal Peak's property and resulted in significant extra expense.

53. Damages from the Fire totaled \$2,355,271.00

**WHEREFORE**, Plaintiff respectfully request this Court award it a judgment against Sullair in an amount to be proven at trial, together with costs, attorney's fees, expenses, pre- and post-judgment interest and any other relief this Court deems just and proper.

**COUNT VI – BREACH OF EXPRESS  
AND/OR IMPLIED WARRANTIES (SULLAIR)**

54. Plaintiff restates and re-alleges all paragraphs above.

55. Sullair designed and manufactured components of the Plant that were incorporated into the Compressor Unit, including but not limited to the subject oil/air separator.

56. Sullair impliedly and/or expressly warranted that its components, including but not limited to the subject oil/air separator, would be fit for the ordinary purpose such components are used, that such components would be fit for Signal Peak's particular purposes, that such components were of fair average quality and that the components would be free from defects.

57. Sullair breached its express and/or implied warranties through the following acts and/or omissions:

- a. Failing to design and manufacture the subject oil/air separator to allow for adequate grounding to prevent sparking or ignition;
- b. Failing to provide adequate warnings and instructions as to the use, maintenance, and service of the subject oil/air separator;
- d. Failing to properly design and manufacture the subject oil/air separator so a fire would not occur;
- e. Failing to use reasonable care when designing, manufacturing, providing warnings/instructions and/or installing the subject oil/air separator and other components in the Compressor Unit;
- f. Improperly delegating, hiring, and/or supervising the workmanship and safety of the services delegated and/or subcontracted to another entity; and
- g. Any other acts or omissions that may become known during the course of litigation.

21 58. As a direct and proximate result of Sullair's breach of its express and/or implied  
22 warranties, the Fire occurred and caused extensive damage to Signal Peak property and resulted  
23 in significant extra expense.

1       59.    Damages from the Fire totaled \$2,355,271.00

2       WHEREFORE, Plaintiff respectfully request this Court award it a judgment against  
3 Sullair in an amount to be proven at trial, together with costs, attorney's fees, expenses, pre- and  
4 post-judgment interest and any other relief this Court deems just and proper.

5       COUNT VII – STRICT PRODUCTS LIABILITY (SULLAIR)

6       60.    Plaintiff restates and re-alleges all paragraphs above.

7       61.    At all pertinent times herein, Sullair was in the business of manufacturing,  
8 assembling, designing, producing, inspecting, selling, and/or otherwise placing into the stream  
9 of commerce components that were incorporated into the Compressor Unit, including but not  
10 limited to the subject oil/air separator.

11       62.    Sullair, in whole or in part, manufactured, assembled, designed, produced,  
12 inspected, an/or sold the subject components, including but not limited to the subject oil/air  
13 separator, and/or placed the components into the stream of commerce.

14       63.    At the time the components, including but not limited to the subject oil/air  
15 separator, left the control of Sullair, a defect existed that rendered the components defective in  
16 that they were dangerous to an extent beyond that anticipated by the ordinary user.

17       64.    The components, including but not limited to the subject oil/air separator were  
18 defective in manufacture, design and/or warning/instruction as:

- 19       a.      Sullair failed to design and manufacture the subject oil/air separator to  
20           allow for adequate grounding to prevent sparking or ignition;
- 21       b.      Sullair failed to provide adequate warnings and instructions as to the use,  
22           maintenance, and service of the subject oil/air separator;
- 23       d.      Sullair failed to properly design and manufacture the subject oil/air  
24           separator so a fire would not occur;
- 24       e.      Sullair failed to use reasonable care when designing, manufacturing,

1 providing warnings/instructions and/or installing the subject oil/air  
2 separator and other components in the Compressor Unit;

3 g. Any other evidence of manufacturing, design and/or warning/instruction  
4 defects that may become known during the course of litigation.

5 65. As a direct and proximate result of the defective condition of the components,  
6 including but not limited to the subject oil/air separator, the Fire occurred and caused extensive  
7 damage to Signal Peak property and resulted in significant extra expense.

8 66. Damages from the Fire totaled \$2,355,271.00

9 **WHEREFORE**, Plaintiff respectfully request this Court award it a judgment against  
10 Sullair in an amount to be proven at trial, together with costs, attorney's fees, expenses, pre- and  
11 post-judgment interest and any other relief this Court deems just and proper.

#### COUNT VIII – NEGLIGENCE (POWER SERVICE)

12 67. Plaintiff restates and re-alleges all paragraphs above.

13 68. At all times relevant herein Power Service had a duty to exercise reasonable care  
14 when servicing, inspecting, and/or maintaining the Plant, including but not limited to the  
15 Compressor Unit, so as to avoid damage to Signal Peak's property.

16 69. Power Service breached its duty through the following acts and/or omissions  
17 constituting negligence, including but not limited to:

18 a. Failing to use reasonable care when performing service, inspection and/or  
19 maintenance work on the Plant, including but not limited to the  
Compressor Unit;

20 b. Failing to warn Signal Peak of the dangerous condition and safety hazard  
posed by the Compressor Unit;

21 c. Improperly delegating, hiring, and/or supervising the workmanship and  
safety of the services delegated and/or subcontracted to another entity; and

22 d. Any other acts or omissions that may become known during the course of  
litigation.

1           70. As a direct and proximate result of Power Service's negligence, the Fire occurred  
2 and caused extensive damage to Signal Peak property and resulted in significant extra expense.  
3

4           71. Damages from the Fire totaled \$2,355,271.00

5           WHEREFORE, Plaintiff respectfully request this Court award it a judgment against  
6 Power Service in an amount to be proven at trial, together with costs, attorney's fees, expenses,  
7 pre- and post- judgment interest and any other relief this Court deems just and proper.

8           **COUNT IX - BREACH OF CONTRACT (POWER SERVICE)**

9           72. Plaintiff restates and re-alleges all paragraphs above.

10           73. Signal Peak contracted with Power Service, whereby Power Service agreed to  
11 provide service, inspection and/or maintenance work on the Plant, including but not limited to  
12 the Compressor unit.

13           74. Power Service breached its contractual duties through the following acts and/or  
14 omissions:

- 15           a. Failing to use reasonable care when performing service, inspection and/or  
16 maintenance work on the Plant, including but not limited to the  
17 Compressor Unit;
- 18           b. Failing to warn Signal Peak of the dangerous condition and safety hazard  
19 posed by the Compressor Unit;
- 20           c. Improperly delegating, hiring, and/or supervising the workmanship and  
21 safety of the services delegated and/or subcontracted to another entity; and
- 22           d. Any other acts or omissions that may become known during the course of  
23 litigation.

24           75. As a direct and proximate result of Power Service's breach of contract, the Fire  
occurred and caused extensive damage to Signal Peak property and resulted in significant extra  
expense.

1 76. Damages from the Fire totaled \$2,355,271.00

2 WHEREFORE, Plaintiff respectfully request this Court award it a judgment against  
3 Power Service in an amount to be proven at trial, together with costs, attorney's fees, expenses,  
4 pre- and post- judgment interest and any other relief this Court deems just and proper.

5 **COUNT X – BREACH OF EXPRESS AND/OR**  
6 **IMPLIED WARRANTIES (POWER SERVICE)**

7 77. Plaintiff restates and re-alleges all paragraphs above.

8 78. Signal Peak contracted with Power Service, whereby Power Service agreed to  
9 provide service, inspection and/or maintenance work on the Plant, including but not limited to  
10 the Compressor Unit, and impliedly and/or expressly warranted that it would exercise reasonable  
11 care in performing its duties so as to avoid damage to Signal Peak's property.

12 79. Power Service breached its contractual duties through the following acts and/or  
13 omissions:

14 a. Failing to use reasonable care when performing service, inspection and/or  
15 maintenance work on the Plant, including but not limited to the  
16 Compressor Unit;

17 b. Failing to warn Signal Peak of the dangerous condition and safety hazard  
18 posed by the Compressor Unit;

19 c. Improperly delegating, hiring, and/or supervising the workmanship and  
20 safety of the services delegated and/or subcontracted to another entity; and

21 d. Any other acts or omissions that may become known during the course of  
22 litigation.

23 80. As a direct and proximate result of Power Service's breach of its express and/or  
24 implied warranties, the Fire occurred and caused extensive damage to Signal Peak property and  
resulted in significant extra expense.

81. Damages from the Fire totaled \$2,355,271.00

1       **WHEREFORE**, Plaintiff respectfully request this Court award it a judgment against  
2 Power Service in an amount to be proven at trial, together with costs, attorney's fees, expenses,  
3 pre- and post- judgment interest and any other relief this Court deems just and proper.

4       **COUNT XI – NEGLIGENCE (DOES)**

5       82. Plaintiff restates and re-alleges all paragraphs above.

6       33. Upon information and belief, John Does 1-10 are individuals and/or companies,  
7 including subcontractors and manufacturers, who participated in and/or provided products used  
8 in the construction, manufacture, installation, maintenance, service, commissioning, and/or  
9 inspection of the Plant, including but not limited to the Compressor Unit.

10       84. Upon information and belief, Does 1-10 had duties of reasonable care in regard to  
11 participating in or providing products for the construction, manufacture, installation,  
12 maintenance, service, commissioning, and/or inspection of the Plant, including but not limited to  
13 the Compressor Unit.

14       85. Upon information and belief, Does 1-10 breached their duties by failing to  
15 adequately perform construction, manufacture, installation, maintenance, service,  
16 commissioning, and/or inspection services for the Plant, including but not limited to the  
17 Compressor Unit, as well as failed to provide adequate products for the same.

18       86. As a direct and proximate result of the actions and/or omissions of Does 1-10,  
19 Fire occurred and caused extensive damage to Signal Peak property and resulted in significant  
20 extra expense.

21       87. Damages from the Fire totaled \$2,355,271.00

22       **WHEREFORE**, Plaintiff respectfully request this Court award it a judgment against  
23 Does 1-10 in an amount to be proven at trial, together with costs, attorney's fees, expenses, pre-  
24

1 and post-judgment interest and any other relief this Court deems just and proper.

2 **DEMAND FOR TRIAL BY JURY**

3 Plaintiff hereby demands a trial by jury on all issues so triable.

4 DATED this 15 day of August, 2016.



5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
Glenn W. Mattar #13228  
Denenberg Tuffley, PLLC  
28411 Northwestern Hwy.  
Suite 600  
Southfield, MI 48034  
Phone: (248) 549-3900  
Fax: (248) 593-5808  
E-mail: gmattar@dt-law.com

And

11 Jack Slavik #5962  
12 Cozen O'Connor  
13 999 Third Avenue, Suite 1900  
14 Seattle, WA 98104  
15 Phone: (206) 373-7238  
16 Fax: (866) 229-5685  
17 Email: jslavik@cozen.com

18  
19  
20  
21  
22  
23  
24 *Attorneys for Plaintiff*